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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/426,931	10/22/1999	WOLFGANG-REINHOLD KNAPPE	BMID9826US	2537

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EXAMINER

CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 05/22/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

ME-11

## Office Action Summary

Application No.

09/426,931

Applicant(s)

KNAPPE, WOLFGANG-REINHOLD

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 29 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29 and 35-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

This Office Action is in response to Applicant's amendments filed on February 28, 2002 and entered as Paper No. 10. Claims 29 and 35-49 are pending in the instant application.

#### *Withdrawal of Rejections from Previous Office Action*

- The rejection of claims 29, 31, 36-39, 41, 43, 44, 45 and 47 under 35 USC 112, second paragraph is withdrawn in view of Applicants' amendment to the claims to correct the indefiniteness.
- The rejection of claims 29, 30, 33, 35, 36, 39-42, 44, 46 and 49 under 35 USC 102(e) over Good et al '224 is withdrawn in view of Applicants' amendment to the claims to recite "oleoyl sarcosinate".
- The rejection of claims 32, 37 and 38 under 35 USC 103 over Good et al '224 is withdrawn in view of Applicants' amendment to the claims to recite "oleoyl sarcosinate".

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 42 contains the phrase "flat-shaped". This makes the claims indefinite because flat generally refers to texture and not shape. It is suggested that Applicants' amend the claim to recite "flat", instead.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 29 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,762,875 to Burmeister (hereinafter Burmeister '875).

Burmeister '875 teach a method for eliminating odors. The method comprises providing a formulation containing a wetting agent, such as oleoyl sarcosinate and impregnating the agent onto a sheet-like carrier. See col. 2, lines 32-60, where Burmeister '875 teaches agents such as N-oleoyl sarcosinate have good surface active powers. See also col. 3, lines 60-65, where the reference teaches that agents are applied to a paper carrier.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102, in view of the teachings of Burmeister '875.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 29 and 35-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,194,224 to Good et al (hereinafter Good et al '224) in view of US Patent 2,063,987 to Dreyfus (hereinafter Dreyfus '987).

Good et al '224 teach a diagnostic test strip for determining the presence of a specified analyte in a fluid sample. The test strip has a test membrane sandwiched between two layers.

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The test membrane has a sample-receiving zone containing a buffer and a fatty acid sarcosinate.

The sample-receiving zone (21) is a pad made of non-woven fibrous material. The sample is absorbed by the pad, solubilizes the buffer and fatty acid sarcosinate and migrates to an adjacent reagent zone (22) containing reagent chemicals in fibrous matrix. The preferred sarcosinate is sodium myristoyl sarcosinate in a concentration of about 1.0 % by weight.

Sodium myristoyl sarcosinate has a chemical formula embraced by that claimed by Applicants and is disclosed as being able to provide better flow characteristics to fluid specimens (col. 3, lines 34-38). Good et al '224 also disclose that the sample-receiving zone is made by imbibing a solution containing a suitable buffer and fatty acid sarcosinate into a sheet to provide the appropriate concentration. See col. 4, lines 8-16 and col. 5, lines 8-27.

Good et al '224 fail to teach the use of oleoyl sarcosinate as the wetting agent.

Dreyfus '987 teaches fatty acid sarcosine as good wetting agents. At col. 2, lines 20-30, Dreyfus teaches higher fatty acid radicals, such as those containing more than 8 carbon atoms are suitable. Dreyfus specifically teaches the oleic acid radical as an example where valuable results may be obtained. The fatty acid sarcosines are particularly used in wet treating textile materials such as fabric-like material.

It would have been obvious to one of ordinary skill in the art to use the oleoyl sarcosine wetting agents taught by Dreyfus in the test strips of Good to provide better wetting properties to the fibrous pads and allow sample to be up taken more efficiently.

With respect to the claims requiring specific weights and thickness of the fibrous material, the skilled artisan would have been able to determine a suitable weight and thickness for the particular sample being collected.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious within the meaning of 35 USC 103 in view of the teachings of Good et al '224 and Dreyfus '987.

***Response to Arguments***

7. Applicant's arguments with respect to claims 29 and 35-49 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

LIC

May 15, 2002

  
**Jill Warden**  
**Supervisory Patent Examiner**  
**Technology Center 1700**